FILED

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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

DORIS MAHER

Petitioner

v.

LONG ISLAND UNIVERSITY: DAVID STEINBERG
WALTER JONES AND GEORGE SUTTON

On Petition For Writ Of Certiorari
To The United States Appeals Court For
The Second Circuit

APPENDIX FOR WRIT OF CERTIORARI

DORIS MAHER PRO SE
2337 MARLBORO STREET
EAST MEADOW, N.Y. 11554
516 781-6629

86 pp

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DC: EDNY
DC DOCKET:92-cv-3598
DC Judge: BLOCK
DC Mag : Pohorelsky

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 2nd day of December one thousand nine hundred and ninety-seven.

Present: Honorable Amalya L. Kearse,
Honorable Richard J. Cardamone,
Circuit Judges,
Honorable Peter K. Leisure,
District Judge*

This is the Seal
UNITES STATES COURT OF APPEALS
FILED
DECEMBER 2, 1997
GEORGE LANG III, CLERK
SECOND CIRCUIT

DORIS MAHER,

Plaintiff-Appellant,

-v- No. 96-9072

LONG ISLAND UNIVERSITY,

Defendant-Appellee.

Appearing for Appellant: Doris Maher
pro se, East Meadow, N.Y.
Appearing for Appellee: Neil G. Sparber,
Fulbright & Jaworski, N.Y.,
N.Y.

Appeal from the United States District Court for the Eastern District of New York.

---

* Honorable Peter K. Leisure, of the United States District Court for the Southern District of New York, sitting by designation.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by plaintiff pro se and by counsel for defendant.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said Dustrict Court be and it hereby is affirmed.

Plaintiff pro se Doris Maher appeals from a judgment of the United States District Court for the Eastern District of New York, Frederic Block, Judge, dismissing Maher's claims against defendant Long Island University ("LIU") for age discrimination and retaliation, in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. S 621 et seq. The district court granted a summary judgment on the ground that Maher failed to file with the Equal Employment Opportunity Commission ("EEOC") within the requisite time after receiving definite notice of her termination. The district court's decision was made after a hearing pursuant to Fed. R. Civ. P. 43 (e), at which Maher agreed to have the factual issues relevant to timeliness of the filing of her EEOC charge decided by the

court. On appeal, Maher contests the dictrict court's factual findings and argues that her EEOC charge was timely filed. Finding no basis for reversal, we affirm.

Before bringing an action in federal court under the ADEA, a plaintiff in New York must have filed her age discrimination charge with the EEOC "within 300 days after the alleged unlawful practice occurred." See 29 U.S.C. S 626 (d) (2); see, e.g., Brodsky v. City University of New York, 56 F.3d 8,9, (2d Cir. 1995); Petrelli v. City of Mount Vernon, 9 F.3d 250, 254 (2d Cir. 1993). The limitations period runs from the time the allegedly discriminatory decision is made and communicated to the plaintiff. See, e.g., Delaware State College v. Ricks, 449 U.S. 250, 258 (1980); Smith v. United Parcel Service of America, Inc., 65 F.3d 266, 268 (2d Cir. 1995). Thus, in an unlawful discharge case, "the last date of employment may not always coincide with the start of the statutory limitation clock...Rather, the limitation period begins to run on the date when the employee receives a definite notice of the termination." Economu v. Borg-Warner Corp. 829 F.2d 311, 315 (2d Cir. 1987) (internal quotations marks omitted); see Miller v. International Telephone & Telegraph Corp., 755 F.2d 20, 23 (2d Cir.). cert. denied, 474 U.S. 851 (1985).

In the present case, in connection with LIU's motion for summary judgment on the ground of untimeliness, the district court, exercising its discretion under Fed. R. Civ. P. 43(e), held a hearing on the disputed issue of when Maher received definite notice of

her termination. See, e.g., Vona v. County of Niagara, 119 F.3d 201, 204 (2d Cir. 1997) (noting district court's authority to hold Rule 43(e) hearing in connection with a motion for summary judgment); Argus v. Eastmann Kodak Co., 801 F.2d 38, 42 n.2 (2d Cir. 1986) (same), cert. denied, 479 U.S. 1088 (1987). The court had previously raised with the parties the matter of the factual question is to the date on which Maher received notice could be decided by the court. At the hearing, the court asked Maher's then-attorney whether Maher agreed that "the matter would go forward before the court," and Maher's attorney responded, "Yes, your Honor." (Hearing Transcript, July 8, 1996, at 4.) Accordingly, Maher waived her right to a jury resolution of that factual dispute, see Fed. R. Civ. P. 39(a)(1) (right to have a jury decide an issue may be waived by "an oral stipulation made in open court and entered in the record"), and the district court was not limited to identifying whether genuine issues of material fact existed as to when Maher received notice of her termination but was entitled to make its own factual findings as to that question.

The findings of the district court are not to be disturbed unless they are clearly erroneous. See Fed. R. Civ. P. 52(a); McAllister v. United States, 348 U.S. 19, 20 (1954). Assessments of the credibility of witnesses and the weight to be given to any piece of evidence fall squarely within the province of the factfinder, and inferences could be drawn, "the factfinder's choice beween them cannot be clearly erroneous." Anderson v. Bessemer City, 470 U.S.

564, 574 (1985); see United States v. Yellow Cab Co., 338 U.S. 338, 342 (1949).

We see no clear error in the district court's finding that Maher received definite notice that her employment by LIU would be terminated as of August 31, 1990, when the consent award was signed on June 24, 1988. The University had been attempting to fire Maher for some time and was permitted, under the collective bargaining agreement governing her employment, to fire her on one year's notice. The consent award stated that "[LIU] shall grant Dr. Doris Maher two years of employment beginning on September 1, 1988" and that "Dr. Maher waives any claim to tenure and/or reappointment." Maher thus received two years' notice--one year more than required--and although Maher testified that it was her "hope[]" that she would be reappointed at the end of those two years, she admitted that no one had ever made such a representation to her. Madeline Litzky, who represented Maher in arbitration, testified that LIU told Maher that although Maher would not be precluded from obtaining reappointment, LIU would not agree to guarantee any more than two years of employment in the consent award. Further, both Litzky and George Sutton of LIU testified that Maher was present when the terms of the award were read at arbitration proceeding in June 1988 and the terms read were the same as the terms in the document. Sutton also testified that there was no discussion about holding a position for Maher after the two years had expired, and that he had unequivocally informed her of her termination.

Since Maher received definite notice

not later than June 24, 1988, as to the August 31, 1990 date for the cessation of her employment with LIU, she had 300 days from June 24, 1988, or until April 20, 1989, to file her discrimination charge with the EEOC. Since she did not file such a charge until November 1990, her age discrimination and retaliation claims are time-barred. In light of the testimony described above, we see no basis for concluding either that the limitations period should have been tolled or that LIU was estopped from asserting it as a defense. LIU's motion for summary judgment was properly granted.

We have considered all of Maher's contentions on this appeal and have foumd them to be without merit. The judgment of the district court is affirmed.

FOR THE COURT:
GEORGE LANGE III, Clerk
by:
"s/ Lucille Carr".

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(This is stamped)
FILED IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
* JUL 29 1996 *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DORIS MAHER,
Plaintiff,
-against-
LONG ISLAND UNIVERSITY AT C.W. POST CAMPUS
Defendant.

JUDGMENT
92-CV-3598(FB)

An order of Honorable Frederic Block, United States District Judge, having been filed on July 24, 1996, for the reasons set forth on the record on July 9, 1996, granting defendant Long Island University's motion for summary judgment based upon plaintiff's failure to timely file her complaint with the Equal Employment Opportunity Commission and, dismissing the complaint in its entirety, it is

ORDERED AND ADJUDGED that plaintiff take nothing of the defendant; that defendant Long Island University's motion for summary judgment is granted; and, the complaint is dismissed in its entirety.

Dated: Brooklyn, New York
July 24, 1996

"s/Robert C. Heinemann"
ROBERT C. HEINEMANN
Clerk of Court

A-3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

DORIS MAHER

Civil Action
No. CV 92-3598(FB)

plaintiff,

-against-

AMENDED
CIVIL COMPLAINT

LONG ISLAND UNIVERSITY
AT C.W. POST CAMPUS

Defendant,

----------x

Plaintiff, DORIS MAHER, complaining of defendant, Long Island University at C.W. Post Campus ("LIU"), by her attorney, respectfully amends the Civil Complaint herein and alleges as follows:

ALLEGATIONS OF JURISDICTIONS

1. At all of the times hereinafter mentioned, plaintiff was, and still is, a resident of the County of Nassau, State of New York, residing at 2337 Marlboro Street, East Meadow, New York.

2. Upon information and belief, at all of the times hereinafter mentioned, defendant LIU is an educational institution providing college and post-college education service with its residence and principal office at Northern Boulevard, Brookville, County of Nassau, State of New York.

3. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination. Juridiction is specifically conferred on this Court by 42 U.S.C. Sect. 2005e-5 and the plaintiff has complied with all the jurisdictional prerequisites under Title VII of the Civil Rights Act of 1964, as follows:

a. The acts complained of in this action concern wrongful termination of plaintiff's employment because of age and

sex discrimination, harassment, unequal terms and conditions, fraud and conspiracy and damage to plaintiff's professional reputation and career and health;

b. Plaintiff initially filed a formal charge of discrimination with the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC"), charge number 16g-91-0581;

c. On or after May 4, 1992, the EEOC notified plaintiff that the EEOC concluded the evidence did not establish a violation of the statute and the plaintiff had the right to sue within (90) days of the receipt of the notification; and

d. Plaintiff has filed this action within ninety (90) days of the receipt of the notice of right to sue.

STATEMENT OF CLAIM

4. Plaintiff, now a sixty-eight (68) year old female, began and continued employment with the defendant, Long Island University at C.W. Post Campus (hereinafter referred to as "LIU") in or about 1975-78 and 1984-90 (a total of 8 years) as a teacher in the the LIU Department of Nursing. Plaintiff has the highest credentials to teach in LIU with post-graduate degrees of Ed.D. (Curriculum & Teaching Nursing in Higher Education), M.Ed. (Maternal-Child Nursing Education) both from Teachers College, Columbia University and M.S. (Computer Education) LIU.

5. When Plaintiff was hired by LIU in 1984, she was sought out by nurse representatives and administrators to leave another nurse department to teach R.N. students, and in addition to coordinate and supervise efforts to obtain national accreditation of the C.W. Post, LIU Nursing Department. Plaintiff

had also been assigned to teach computer education. LIU administrators desired and required National League for Nursing ("NLN") accreditation in order to overcome an increasingly low enrollment, repeated denials of accreditation and to avoid closure of the inefficient and weak education program delivered in the LIU Nursing Department. Plaintiff had the highest credentials in nursing curriculum and teaching in additon to experience in nursing, necessary to bring about NLN accreditation. Furthermore, plaintiff was on the Board of Directors of the Constituent League of the NLN (the accrediting body of nursing education.

6. Plaintiff met all the requirements to be granted tenure and in 1988 was recommended for tenure by her colleagues and LIU C.W. Post Campus Faculty Committee. The committee members included untenured nursing faculty as well as tenured professors from other LIU disciplines and the LIU C.W. Post Campus faculty Council. Moreover, plaintiff proved herself industrious, presented and represented herself in an orderly and respectful manner. LIU tenure requirements included evidence and proof of plaintiff's excellent positive faculty evaluations and excellent positive student evaluations, current and completed research, scholarly pursuits and achievements such as Nursing Leaders Recognition Awards from the International Honor Society for Nurses, professional and community involvement with achievements on the local state and national levels and earned, completed degrees as follows: EdD (Nursing Education, Curriculum & Teaching in Higher Education), M.Ed (Maternal-Child Nursing Education) and M.S. in Computer Education including Certificates in

Nursing Education, Service and Computer Education. Furthermore, C.W. Post Department of Nursing, LIU received its National Accreditation as a direct result of the plaintiff's professional accomplishments and efforts. Dr. Maher's characteristics, qualities and qualifications as stated above are indeed the necessary requirements of Nursing Faculty in order for LIU to obtain accreditation from the National League for Nursing. Since the inception of the LIU C.W. Post Department of Nursing and until 1990, the male LIU administrators had not granted tenure to any nurse-teacher at LIU and the nurse teachers were all females. It was not until after plaintiff's Human Rights Charge of Sex Discrimination, did these LIU administrators begin to grant a nurse teacher tenure in the LIU Nursing Department. These LIU Administrators refused tenure to plaintiff but granted tenure to nurse-teachers who were less qualified in nursing curriculum but younger and received lower salaries than the plaintiff.

7. In or about August and September 1990 LIU through Walter Jones, Academic Vice-President, contacted me in writing and by telephone and informed me I would not be rehired for the academic year commencing in September 1990. Mr. George Sutton, Director of Labor Relations also informed me of this fact on the telephone and in writing. At that time plaintiff had been employed with LIU for more than seven (7) years and would have continued to receive increased vested entitlement to retirement benefits and tenure in C.W. Post Nursing Department, LIU.

8. Plaintiff was discharged notwithstanding that there were faculty positions vacancies in the LIU Department

of Nursing and Computer Department. In truth and in fact, in or about September 1990 LIU hired employees in the Department of Nursing to replace plaintiff who were younger, less qualified and paid lower salaries than plaintiff.

9. The career of plaintiff with defendant reflected above-average performance and increasing responsibility.

10. Plaintiff, Doris Maher, was discharged by defendant, LIU, because of her age and sex. This action violated Section 4(a) (1) of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 623(a) (1).

11. Defendant's discharge of plaintiff, Doris Maher, was a willful violation of the Age Discrimination in Employment Act of 1967, within the comtemplation of Section 7(b) of the Act, 29 U.S.C. Section 626(b).

12. Upon information and belief, plaintiff alleges and contends as the particulars of her action as follows:

(a) LIU terminated her to punish her in retaliation for Human Rights Complaint filed by her in or about June 1987 for age and sex discrimination;

(b) LIU confiscated plaintiff's personal belongings in her faculty office prior to her termination date of employment, and refused to return to plaintiff, although duly demanded, any of her belongings;

(c) Plaintiff was verbally harassed by Walter Jones and other LIU employees and representatives concerning her age and termination;

(d) Any purported Arbitration Award for the prior Human Rights Complaint was fraudulently obtained and without plaintiff's consent since such Award was

prepared without plaintiff's knowledge or presence, was not an accurate portrayal of the settlement or award to which plaintiff agreed, and plaintiff did not timely receive a copy of said Award, in that plaintiff never agreed to termination to her employment in or about August 1990 but, rather, understood and agreed, during the arbitration, continual employment if such vacancy was available, and which vacancy was available.

(e) Defendant's employee and authorized repesentative, George Sutton, represented to plaintiff she would be rehired and employment would continue if she agreed to the Arbitration Award. Plaintiff relied on said representations; said representations were false when made and Mr. Sutton knew them to be false at the time they were made;

(f) LIU wrongfully refused, even though they previously represented otherwise, at the time of plaintiff's discharge to put her on COBRA for health insurance purposes, even though plaintiff volunteered to pay for her own share of the Blue Cross/Blue Shield premium costs;

(g) George Sutton represented to plaintiff at the time of her discharge the the LIU Department of Nursing was being phased out. Plaintiff relies on said representation, however, this representation was false when made and Mr. Sutton knew it to be false at the tome it was made.

13. Plaintiff's professional career and reputation has been irreparably damaged by the wrongful actions of LIU complained of herein after years of dedicated and devoted work.

14. Plaintiff has been continually harassed, lied to, suffered health and personal damage.

15. The systematic discrimination

practiced by defendant referred to above, has been implemented and continued by said defendant and was and is a continuing nature. As a proximate result of the acts practiced by defendant, plaintiff has been denied a promotion and tenure, has been paid less and discriminated against in comparison to other colleagues similarly situated, lost prestige to which she was entitled and suffered embarrassment, humiliation and other indignities.

WHEREFORE, plaintiff demands judgment against defendant, as follows:

(a) A money judgment in favor of plaintiff in an amount of at least $2000,000.00 plus additional money damages, the exact amount of which is unknown to plaintiff at this time and leave of Court will be asked to insert the full amount when same has been ascertained; and

(b) Punitive damages in favor of plaintiff, in the amount of $6000,000.00 for defendant's gross, wanton and discriminatory breach of its legal obligations to plaintiff and fraud; and

(c) An award of reasonable attorney's fees; and

(d) Such other and any further relief as may be deemed just and proper, together with all interest, costs and disbursements as allowed by law.

Dated: December 2, 1992
Manhasset, New York

"s/Robert A. Wagner"
ROBERT A. WAGNER, ESQ.(7918)
Attorney For Plaintiff
Address & P.O. Box
1615 Northern Boulevard
Suite 103
Manhasset, New York 11030
(516) 627-7778

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x Stamped: FILED
U.S. DISTRICT COURT
* FEB 7 1997 *

MAHER
Plaintiff,

-against-

LONG ISLAND UNIVERSITY
Defendant

----------x

CV-92-3598
United States
Courthouse
Brooklyn New York
July 9, 1996
10:30 a.m.

TRANSCRIPT OF DECISION
BEFORE THE HONORABLE FREDERIC BLOCK
UNITED STATES DISTRICT JUDGE

APPEARANCES:
For the Plaintiff: ROBERT WAGNER, ESQ.

For the Defendant: NEIL SPARBER, ESQ.

Court Reporter: FREDERICK R. GUERINO,
C.S.R.
225 Cadman Plaza East
Brooklyn. New York
718-330-7687

Proceedings recorded by mechanical stenography, transcript produced by computer.
FREDERICK R. GUERINO, C.S.R. OFFICIAL COURT REPORTER

(Page 2 of transcript lines 1-25):

1 (Open Court)
2 THE COURT: Now, I just want to confirm that we are
3 not dealing with sex discrimination, we are only
4 talking about age discrimination, though I do point out that
5 the complaint does refer to sex discrimination as well. I
6 don't see any sex discrimination claim here, do you agree with
7 that?

8 MR. WAGNER: Yes, Your Honor
9 THE COURT: So I am not dealing with this in terms of
10 sex discrimination, and this is the Court's decision.
11 The plaintiff Doris Maher brings this action alleging
12 retalitatory termination pursuant to Title 7 of the Civil
13 Rights Act of 1964, and employment discrimination based on age
14 pursuant to Section 4(a) (1) of the Age Discrimination
15 Employment Act of 1967.
16 Presently before the court is the motion by
17 defendant Long Island University pursuant
18 to Federal Rule of Civil Procedure 56 on the grounds that:
19 The court lacks jurisdiction over Maher's
20 discrimination claims because che failed to file a charge with
21 the Equal Employment Opportunity Commission, which we'll refer
22 to as EEOC, within 300 days of the alleged discriminatory act;
23 Two, Maher's age discrimination claim is barred by
24 the statute of limitations because she failed to file her
25 claims within three years of the alleged discriminatory act;
(page 3 of transcript lines 1-25):
1 Three, Maher waived and released her claims pursuant
2 to a June 24, 1988 consent award; and
3 Four, Maher has provided no evidence of retaliatory
4 termination under Title 7.
5 Now, the following facts are drawn from the
6 allegations of Maher's complaint and

the parties statements
7 pursuant to local Rule 3(g), documents, deposition and
8 supporting affidavits contained in Maher's affidavit in
9 opposition and the documents in supporting affidavits annexed
10 to L.I.U.'s notice of motion.
11 In support of her ADEA Claim, Maher sets forth the
12 following that there was a consent Award in 1987 where:
13 One, that Maher was employed by L.I.U. as a teacher
14 in the Department of Nursing for a total of eight years from
15 1974 to 1978 and from 1984 to 1990. During the 1985-86
16 academic year, the personnel committee of the Nursing
17 Department voted and recommended that Maher's employment be
18 terminated as of August 31, 1987;
19 Two, based on L.I.U.'s decision not to reappoint her,
20 Maher filed a grievance against L.I.U., and an EEOC complaint
21 with the States Division of Human Rights;
22 Three, the grievance was reviewed and her claim was
23 resolved in an award of arbitrator Walter L. Eisenberg, which
24 found that L.I.U. violated the parties collective bargaining
25 agreement for not reappointing Maher for the academic year
(page 4 of transcript lines 1-25):
1. 1987-88. The arbitrator did not enter an award after making
2 its finding since L.I.U. reversed its non-reappointment
3 decision om its own accord and reinstated Maher for an

4 additional academic year for 1987-88. At the end of that time
5 she was to be terminated unless the results of the 87-88
6 review process rendered a determination favorable to her;
7 Maher was recommended for tenure by the
8 Chairperson of the Department of Nursing, in the 87-88
9 academic year. Despite this recommendation on May 24, 1988,
10 Maher was notified by letter from Dr. Walter Jones,
11 Vice-President for Academic Affairs, that she was not awarded
12 tenure or contractual appointment, and she was terminated as of
13 August 31, 1988;
14 Five, Maher filed another grievance with the union
15 against L.I.U. complaining of termination and denial of
16 tenure.
17 At the hearing that resulted for this grievance,
18 before the once-again arbitrator Eisenberg, Maher contends
19 that she was not recommended by counsel, but instead by
20 Madeline Litzky, a representative of this union. A consent
21 Award signed by the arbitrator was entered on June 24, 1988,
22 and it contains all the provisions that are set forth in
23 Plaintiff's Exhibit No. 1, which is the same as the
24 Defendant's Exhibit E.
25 Now, based on these allegated facts, Maher contends

(page 5 of transcript lines 1-25):

1 as follows:
2 One, that the consent award was fraudulent from the

3 inception because it was prepared
without her knowledge or
4 presence. It was not an accurate
account of the settlement
5 award to which she had agreed or to
which she authorized
6 Litzky to agree, and she was not a
signatory to such
7 agreement.
8 Two, she objected to the consent award
upon its
9 receipt on or about September 2, 1988.
She immediately
10 contacted both George Sutton, Director
of Personnel and Labor
11 Relations, and Litzky, raising
objections to be called a
12 "retiree", to the absence of language
indicating that she
13 would be retained in the event there
was an opening, and, furthermore,
14 that both Litzky and Sutton assured
her that the consent award
15 would be revised.
16 Three, that she withdraw her
discrimination claims
17 based upon Sutton's promise that he
would straighten it out
18 and his insistence that she go ahead
and withdraw her
19 discrimination and EEOC claims.
20 Four, the consent Award was never
revised as
21 allegedly promised.
22 Five, she was not provided with the
benefits she was
23 to receive pursuant to the
understanding of the settlement or
24 pursuant to the actual wording of the
consent award.
25 Furthermore, her medical benefits were
canceled on
(page 6 of transcript lines 1-25):
1 September 11, 1990.

2 She wrote to Jones and Sutton attempting to enforce
3 her medical benefits, reiterating that she was not or never
4 intended to be a retiree, that the consent was fraudulent and
5 that she was discriminated against when L.I.U. hired new
6 faculty instead of retaining her for teaching assignment.
7 Jones told her that her benefits were terminated
8 she was 65, had to retire, that medicare was enough
9 for her.
10 Finally, six, on August 29, 1990 she reported to work
11 and found that her name had been removed from her door and her
12 personal belongings and papers were removed
13 she sent two more letters to Jones expressing her
14 distress about being terminated, and again informing him that
15 the consent award did not reflect her understanding of the
16 agreement between the parties.
17 Furthermore, Jones eventual response was in a letter
18 informing her that she would not be reappointed or be rehired for
19 the following academic year.
20 I believe that fairly portrays Mrs. Maher's factual
21 contentions and the essence of her coming into federal court.
22 Now, on November 15, 1990, Maher filed a claim with
23 the New York State Division of Human Rights, and the Economic
24 Employment Opportunity Counsel.
25 On November 13, 1991, the New York State Division of

(page 7 of transcript lines 1-25):

1 Human Rights determined that her claim had accrued in April of
2 1987, when Maher was notified that her employment would be
3 terminated as of August 31, 1987.
4 On May 4, 1992, the EEOC granted a right to sue
5 letter. She subsequently brought these claims under the ADEA
6 and Title 7.
7 Now, the court is not going to place on the record
8 the normal standards for summary judgment review. They are
9 known to the parties, and I'm not going to burden the record
10 with reiterating them at this time.
11 The defendant from Long Island University contends that
12 there was no subject matter jurisdiction. However, in order
13 to commence a federal action based upon alleged violations of
14 the ADEA or Title 7, the plaintiff must first file a charge of
15 discrimination with the EEOC or its appropriate representative
16 within 300 days of the alleged unlawful act of discrimination
17 and a right to sue letter. The Supreme Court of the United
18 States has held that Congress intented these administrative
19 time limits to serve more as a statute of limitations than than as
20 a jurisdictional prerequisite. Zipes - vs-TransWorld Airlines
21 Inc., 455 U.S. 385, 395, Note 11 (1982).
22 As a matter of law, therefore, Maher's ADEA claim and
23 Title 7 claim is not barred for lack of subject matter

24 jurisdiction, and L.I.U.'s motion on summary judgment on that
25 ground is denied. We are dealing with the issue of statute of

(page 8 of transcript lines 1-25):

1 limitations and not subject matter jurisdiction.
2 Now, with respect to the statute of limitation.
3 L.I.U. contends that Maher's claims are time barred. Under
4 the ADEA, a cause of action accrues on the date of the alleged
5 unlawful practice. The Supreme Court has clearly annunciated
6 that principle of law in Delaware State College -vs- Ricks,
7 449 U.S. 250, (1980).
8 The proper focus in that regard is "the date when the
9 employee receives definite notice of the termination not upon
10 his or her discharge."
11 Miller v. International Telephone and Telegraph
12 Corporation, 755 F.2d, 20, 23, (Second Circuit 1985).
13 Thus, the 300-day statute of limitation does not
14 begin to run until the plaintiff "either acquires actual
15 knowledge of the fact that comprises his cause of action or
16 should have acquired such knowledge in the exercise of
17 reasonable diligence after being apprised of sufficient facts
18 to put him on notice," Cerbone -vs- International Ladies
19 Garment Union, 768 F.2d 45, 48, (Second Circuit 1985).
20 The issue of the timeliness of Maher's EEOC complaint
21 and this ensuing lawsuit requires,

therefore, the
22 identification of the precise unlawful employment practice of
23 which Maher complains and also the date on which she was
24 placed on notice of such violation.
25 The court must, therefore, determine when Dr. Maher

(page 9 of transcript lines 1-25):

1 knew or should have known that she would be terminated come
2 August of 1990.
3 The resolution of this issue lies in the validity of
4 the consent award. If the consent award is enforceable and
5 lawful, and Maher was placed on notice of termination as of
6 June 24, 1988, the date in which the consent award was
7 rendered, the ADEA claim certainly would be time barred; and
8 if the consent award is unenforceable, then the claim accrued
9 in August 1990, the date on which she was ultimately
10 terminated, and her ADEA claim would be timely brought.
11 The reason for that is because if the court believes
12 that the consent award is not valid, then her understanding,
13 if the court gives credence to it, is that she was to continue
14 with her employment beyond August 1990, and the only reason
15 why she was not allowed to continue, according to her claim,
16 was that she was replaced by a younger, less qualified
17 nurse, at a lower salary, and if those facts are credited and
18 the consent award is vitiated, then she cannot, in the court's

19 opinion, be held to have knowledge of the discriminatory act
20 back in 1988, since she had every right to anticipate ongoing
21 employment, and she raises an age discrimination claim in the
22 context of that anticipated ongoing employment.
23 The court, therefore, believes that the summary judgment
24 cannot be awarded to the defendant, since the consent award or
25 the validity of the consent award is key to the issue of

(page 10 of transcript lines 1-25):

1 summary judgment. However, I should say summary judgment
2 cannot be awarded based upon the papers.
3 However, since we are dealing with a discrete issue,
4 namely the validity of the consent award, et cetera, the court
5 has exercised its discretion under Rule 43(e) to take
6 testimony in aid of the Rule 56 motion, and by doing so the
7 court believes it is the efficient way of addressing this
8 matter, rather than have the parties proceed with the elaborate
9 discovery, et cetera, on all other matters which may not come
10 to fruition at the additional cost and expense attendant upon
11 litigation in the federal form, and so the court has ordered
12 a hearing in aid of summary judgment pursuant to its broad
13 authority under Rule 43(e) of the Federal Rules of Civil
14 Procedure.
15 And that processhas been recognized by courts and

16 and affirmed by the Second Circuit. Specifically the case of
17 Costa-Gavras, 650 Fed. Supp. 153, at 156, Southern District,
18 New York, 1986. specifically quotes from another case to the
19 effect that "Rule 43(e) can be used to hear motions for
20 summary judgment," referring to the case of Argus -vs- Eastman
21 Kodak Company, 801 F.2d 38, 42, footnote two, Second Circuit
22 1986.
23 I think it is good sound policy to exercise that
24 in the proper scenario, and I believe this is that
25 type of proper situation.

(page 11 of transcript lines 1-25):

1 Now the validity of the consent award and the
2 effectiveness of any waiver depends on whether it was
3 knowingly and voluntarily given, that's the standard under
4 Bormann -vs- A.T.&T. Communications Inc., 875 F.2d 399, Second
5 Circuit 1989.
6 The Second Circuit in Bormann noting the
7 congressional purpose underlying the ADEA to eradicate
8 discrimination in employment adopted a "totality of the
9 circumstances " standard in assessing the validity of a
10 release, and in effect if I find the consent award to be
11 viable, this will serve as a release of any rights
12 which she might otherwise have, unless the consent award in
13 itself was the product of some age discrimination, which is

14 not really a claim here.
15 The following factors are among those to be
16 considered in assessing the consent award,
17 which the court draws from the Bormann case
18 One, the plaintiff's education and business
19 experience.
20 Two, the amount of time plaintiff had possession of
21 or assess to the agreement before signing it.
22 Three, the role plaintiff had in deciding the terms
23 of the agreement.
24 Four, the clarity of the agreement.
25 Five, whether the plaintiff was represented by or

(page 12 of transcript lines 1-25):

1 consulted with an attorney.
2 Six, whether the consideration given in exchange for
3 the waiver exceeds employee benefits to which the employee was
4 already entitled to by contract or law.
5 Seven, whether an employer encourages or discourages
6 an employee to consult an attorney.
7 And eight, whether the employee had a fair
8 opportunity to do so.
9 The Court in Bormann specifically set forth that
10 criteria at page 402, 875 F.2d at 402.
11 Now, applying those standards, the court now turns to
12 the testimony that was elicited at the hearing and the
13 exhibits that were accepted into evidence.
14 The plaintiff testified that she believed that

15 in 1990, as a result of the 1988 settlement agreement, that
16 she was to get blue cross blue shield major medical, and she
17 also claims that she was to be hired if there was an opening
18 or a vacancy, and she testofied that the nursing program was
19 to be closed out, and implicit in her testimony is that it was
20 her belief that if the nursing program was not closed out, and
21 there was opportunity to continue to staff the nursing
22 program, that she would be retained beyond her two-year term
23 set furth in the 1988 settlement agreement as assistant
24 professor and teacher of nursing.
25 Ms. Maher testified under cross-examination that she

(page 13 of transcript lines 1-25):

1 was being given two years of additional employment berause of
2 the consent award, and if not for this, her collective
3 bargaining agreement would have only have entitled her to one
4 additional year with notice to that effect.
5 She acknowledged that the consent award does provide
6 some benefits over and above what otherwise would have been
7 provided for employees, be they retirees or be they those who
8 were tenured, or be they those that were there more than ten
9 years, and that there was some confusion on the part of Ms.
10 Maher perhaps, or other parties, as to what the extent and the
11 breath of the dimension of the benefits would be. But there's

12 no question that she did obtain or is entitled to obtain some
13 additional benefits by reason of the consent award that
14 would not have been available for teachers of any
15 stripe or circumstances or status.
16 Ms. Maher testified that she was at the
17 hearing in March 1988 with Arbitrator Eisenberg with Dr.
18 Knacht, K-n-a-c-h-t --
19 Mr. Wagner: K-n-o-p-f, I believe.
20 THE COURT: K-n-o-p-f, with George Sutton, with
21 Madeline Litzky, with Mr. Catalano. There was some discussion
22 at that time obviously that took part in her presence. She
23 She testified that Sutton -- Litzky said that she would change the
24 consent award, since it did not mean that she was to retire.
25 That's her testimony.

(page 14 of transcript lines 1-25):

1 The court credits the testimony of Madeline Litzky,
2 and relies upon that testimony, together with the testimony of
3 George Sutton, in making a determination that the consent
4 award was lawful, was valid, that the plaintiff voluntarily
5 and knowingly entered into the award as written, with full
6 knowledge of all its terms and conditions, and with full
7 knowledge that she would be employed beyond the
8 two-year period as set forth in the consent award.
9 Specifically, the court was impressed with the fact
10 that Ms. Litzky was the plaintiff's

representative. Although
11 not an attorney, she was a trained
labor relations specialist
12 and at that time she was a field
representative for NYSUT,
13 which the court recognizes as a
competent, capable union, in
14 fact a leading union for many years in
New York State.
15 protecting the rights of teachers.
16 According to Ms. Litzky, Ms. Maher
wanted three years
17 of employment, since that would give
her ten years total
18 employment and would entitle her to a
full complement of
19 health insurance benefits. That the
negotiations focused on
20 the number of years of continued
employment, namely whether it
21 would be three years that Mrs. Maher
wanted, or whether it
22 would be less than that as L.I.U.
wanted.
23 In any event, Mrs. Maher was clearly
aware that the
24 negotiations entailed the length of
her employment, and the
25 two-year period was ultimately agreed
upon with full knowledge
(page 15 of transcript lines 1-25):
1 of Mrs. Maher and all the parties.
2 While Mrs. Litzky did testify that
Sutton stated that
3 they would not close the door to Mrs.
Maher if there was the
4 prospect of additional employment, Mrs.
Litzky testified
5 unequivocally, and the court so finds,
there was no guaranty
6 of this, and L.I.U. would not under
such circumstances put
7 such language into an agreement. The
court finds that Mrs.

8 Maher had knowledge of that.
9 Ms. Litzky also explained to the court's
10 satisfaction was put into the consent
11 award to facilitate and accommodate the opportunity for Mrs.
12 Maher to obtain what she was basically was set to obtain, that is
13 full medical benefits for her retirement years, and this was
14 put in because the representative of Mrs. Maher, namely Mrs.
15 Litzky, thought this would be advantageous to her.
16 Mrs. Litzky testified, and the court so finds, that
17 she testified credibly, that Maher raised questions concerning
18 the use of the word "retiree," but was told by Mrs. Litzky
19 this word was used so that she could have her health
20 insurance, and was not intended to suggest that she had the
21 right to continue her employment beyond the agreed period of
22 two years.
23 Ultimately, the consequences of Mrs. Litzky's
24 testimony, which the court fully credits, that the consent
25 award fully conformed to her understanding and the client's

<u>(page 16 of transcript lines 1-25):</u>

1 understanding and that there was never any discussion to
2 changing the consent award. Once again the word "retiree" was
3 put into the consent award to give Maher the maximum amount of
4 benefits that one would be able to achieve if in fact they
5 left service or retired after ten years.

6 Mrs. Litzky also testified and once again the court
7 credits her testimony, to the fact that the arbitrator read
8 all the notes that the parties had negotiated, and were to
9 become part of the consent award, that they were in exact
10 conformity with the consent award, and that Mrs. Maher was
11 present when these notes were read by Arbitrator Eisenberg.
12 Mrs. Litzky also testified, in response to the
13 court's questioning, that the defendant never said anything
14 about continuing Mrs. Maher's employment in the event of a
15 vacancy, or the nursing program would be continued beyond
16 August of 1990.
17 Mrs. Litzky's testimony is supported by the testimony
18 of George Sutton, counsel for L.I.U., explaining in detail the
19 prior arbitration that took place back in November of 1987,
20 and explaining the sequence of events that lead up to the
21 consent award. Significantly, Mr. Sutton testified, and the
22 court credits hid testimony, that Mrs. Maher was present
23 during the entire settlement discussions before the arbitrator
24 June 24, 1988. While there was several discussions on
25 that date and prior thereto amongst representatives of the

<u>(page 17 of transcript lines 1-25):</u>

1 parties wherein Mrs. Maher was not present, at the fateful
2 period, specifically the proceedings and the hearing before

Arbitrator Eisenberg, she was in attendance, and as I stated before, the notes which served as the predicate for the consent award were read by Eisenberg in her presence.

The court is satisfied particularly Mr. Sutton's testimony that it was made perfectly clear to Mrs. Maher that she was only to be employed for a period of two years.

With those findings, the court, therefore determines that Mrs. Maher was fully apprised of all her rights as of June 24, 1988, that she fully comprehended at that time that she would be terminated two years hence, more specifically in August of 1990, and that her obligation to initiate her discrimination claim for the EEOC commenced from June 24, 1988, the date of the definite notice of termination, and, therefore the statute of limitation is applicable since she did not comply with the 300-day requirement, having brought her complaint in 1990; specifically, if I recall correctly, it was November of 1990.

The court believes that there's no question that given the validity of the consent award, the absence of any waiver or release, that notice of termination was clearly established as of June 24, 1988, and since the Ricks case requires that to be the point of departure for purposes of calculating the running of the

requisite time periods and not
(page 18 of transcript lines 1-25):
1 the date of discharge, the plaintiff
was barred by reason of
2 the statute of limitations and summary
judgment is,
3 accordingly, granted to the defendant
Long Island University
4 with respect to the ADEA claims.
5 Now, in respect to the claim for
retaliation under
6 Title 7, obviously since the court has
found that the consent
7 award is lawful and valid, there can be
no retaliation claim
8 for a number of reasons, and, of
course, what is primary,
9 there can be no causal connection
between the filing of the
10 claim back in 1987, and L.I.U.'s
decision to terminate her in
11 August of 1990. That three year
period of time certainly is
12 incompatible with any concept of
causation; but more
13 fundamental, since the consent award
is lawful, there's no
14 basis for any retaliation as a matter
of law, and, therefore,
15 summary judgment is granted with
respect to the retaliation
16 claim as well.
17 I will just add with respect to the
1987 with
18 with the New York State Division of
Human Rights, Maher has offered
19 no supportive documentation
whatsoever, other than the
20 allegation that her termination of
1990 was in respose to the
21 filing of that claim, and there's just
no basis for
22 retaliation in this case.
23 Now, that constitutes my decision.

Summary judgment
24 is granted.
25 I just add as a postscript that it is regrettable

(page 19 of transcript lines 1-25):

1 that there are problems that have evolved here because of Mrs.
2 Maher's failure to accept inevitably the fact that
3 universities do have the right to determine period of
4 employment for its employees, and that they are not bound to
5 grant tenure. Many times teachers are very frustrated because
6 they believe they are qualified and, indeed, they may very
7 qualified for employment, and they take personal affront to
8 the fact that talent is not recognized by tenure. It is just
9 one of the realities of academic life. It's a tough pill to
10 swallow. Much of that I suspect has been the basis for
11 Mrs. Maher's efforts. We do have legal rules and principles,
12 though the parties have been trying to negotiate a settlement
13 of their rights. Mrs. Maher is skilled in using settlement
14 processes. I'm sorry that it wasn't successfully brought to
15 fruition here.
16 I commend the parties for making an effort, but now
17 this litigation is over. I encourage you folks to settle
18 this matter with you specifically, Mrs. Maher, we have to
19 comply with the rules, and we have the statute of limitations
20 here, and hopefully Mr. Wagner will explain all this more

21 fully to you because I would like you to understand why it is
22 that I have to dismiss your case, I'm a hundred percent
23 confident that my talent allows me to explain it
24 sufficiently on the record because we are dealing with what
25 might be perceived as technical types of principles of law.

(page 20 of transcript lines 1-25):

1 So, I will encourage Mr. Wagner to perhaps give you a
2 more elaborate explanation of what the statute of limitations
3 is all about, but this is not the proper place for me to do so
4 beyond what I already set forth on the record.
5 I hope that you enjoy your retirement. I also hope
6 that the parties will be able to now enforce the consent award
7 without need for further litigation. I would hate to see that
8 happen. That issue is not before me, I don't believe.
9 Are there any residual issues dealing with the
10 enforcement of the consent award?
11 MR WAGNER: No, Your Honor.
12 THE COURT: No state, no pending claims here at all?
13 All right.
14 I just trust that the good faith of the LIU folks,
15 I think they will act in good faith and Mrs. Maher will bend
16 in an effort that it will happen smoothly so that it will not
17 require further litigation in state court.
18 I thank you for your cooperation. This concludes

19 this lawsuit.
20 I will enter a docket sheet and I will enter a one
21 paragraph order dismissing the complaint. There's no need for
22 you to submit anything to me.
23 Take your exhibits, you may need them.
24 (The trial is concluded.)

A-5

AMERICAN ARBITRATORS ASSOCIATION
Case No. 17-300-0025-88

In the Matter of the Arbitration
-between-
C.W. Post Collegial Federation, Union
-and-
Long Island University, Employer

Consent Award (Grv.: Dr. D. Maher

Before: Walter L. Eisenberg, Arbitrator

Appearances:

For the Union:
Madeline Litsky, Field Representative, NYSUT
Ralph Knopf, President, Local 3517
Doris Maher, Grievant

For Employer:
Douglas Catalano, Esq., Attorney:
Reavis & McGrath
George Sutton, Director, Personnel and Labor Relations

* * * * * * * * * * *

BACKGROUND

The above named Union and Employer submitted to the Undersigned as Abitrator for final and binding determination a grievance involving the Employer's denial of tenure to Dr. Doris Maher.

Hearings on the issue were scheduled and held on April 22, 1988 and June 20, 1988 at the University's C.W. Post campus in Greenvale, New York. The parties had introduced 19 Exhibits and the testimony of the two witnesses at the first hearing, and indicated at the second hearing that there was a basis for settlement of the grievance. With the assistance of the Undersigned the details for a settlement was discussed, and formulated by the undersigned. The

parties and the grievant agreed upon the formulation of the terms of the settlement and requested that these be entered in a CONSENT AWARD. The request was granted.

CONSENT AWARD

The Undersigned, constituting the duly authorized Arbitrator to whom was voluntarily submitted the matter in controversy (AAA Case No. 17-300-0025-88) between the parties above-named, and having participated with the parties and the grievant in formulating a mutual agreed upon settlement of the controversy, makes the following CONSENT AWARD.

1. The Employer shall grant Dr. Doris Maher two years of employment beginning on September 1, 1988.

2. In the second year of said employment Dr. Maher shall be assigned to teach in the Nursing Department and/or in the Educational Technology Department, with the understanding that her teaching schedule beginning in the Fall of 1988 will be the one that has already been agreed upon.

3. Dr. Maher's performance will no longer be subject to annual review.

4. In the second year of her employment, Dr. Maher will contribute 7 1/2% of her salary and the Employer will contribute 16 1/2% of her salary to the TIAA-CREF Pension Plan, toward her pension.

5. After her two years of employment, when Dr. Maher retires from Long Island University, she is to be covered by the Blue Cross-Blue Shield and Major Medical benefits provided by the Employer to retirees, as provided in the Collective Bargaining Agreement for retirees who have 10 years of services at Long Island University.

6. As of the date of this CONSENT AWARD Dr. Maher shall withdraw the discrimination and arbitration cases filed by her or on her behalf.

7. Dr. Maher waives any claim to tenure and/or reappointment, except as set forth in this CONSENT AWARD, and she waives any claim(s) of untimely notice under the ARTP and any right(s) to grievance and arbitration with reference to ARTP.

8. Dr. Maher will continue to be entitled to benefits available to her as a probationary faculty member within her two year period, except as otherwise provided herein.

9. The provisions of this CONSENT AWARD are agreed to without any admission to by the Employer that it has violated any applicable anti-discrimination statute(s), including the Executive Law of the State of New York, or any law or regulation of any other governmental entity, or that the Employer has violated any provision(s) of the Collective Bargaining Agreement.

10. Dr. Maher warrants that she presently has chosen not to have legal counsel in this proceeding, or before the State Division of Human Rights or before the Equal Employment Opportunity Commission. Her sole representative in this proceeding is C.W. Post Collegial Federation Local 3517, and NYSUT, AFT, AFL-CIO.

11. The undersigned retains jurisdiction in this arbitration case for the purpose of deciding any dispute that may arise between the Union and Employer with reference to any provision of the CONSENT AWARD.

Walter L. Eisenberg
Arbitrator

State of New York)

ss:

County of Kings)

I, Walter L. Eisenberg, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.

June 24, 1988 "s/Walter L. Eisenberg"

(Signature of Arbitrator)

This is stamped
COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DORIS MAHER

Plaintiff,

-against-

LONG ISLAND UNIVERSITY AT C.W. POST CAMPUS,

Defendant.

CIV. 92-3598
AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

DORIS MAHER, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action and I make this affidavit in opposition to defendant's motion seeking an order granting summary judgment dismissing Amended Complaint in this action.

2. The defendant's motion is based on the inaccurate premise that I did not file a charge or claim with the Equal Employment Opportunity Commission ("EEOC") within the required time periods. For the reasons set forth herein, defendants discriminatory act occurred in or about August 1990 when I learned defendant intended to wrongfully refuse to reappoint and/or rehire me. Therefore, the charge with the EEOC was filed within 300 days of the discriminatory act and the discriminatory claim was files within three years of the discriminatory act.

Factual History

3. I commenced and continued employment with defendant, Long Island

University at C.W. Post Campus ("LIU"), in 1975-1978 and 1984-1990 (a total of 8 years) as a teacher in the C.W. Post Center, LIU Department of Nursing. When I was rehired by LIU in 1984, I was actively pursued by them and sought out by nurse representatives and administrators to leave another Nursing School to teach R.N. students and, in addition, coordinate and supervise efforts to obtain national accreditation of the C.W. Post Center LIU Nursing Department.

4. C.W. Post Center, LIU Administrators expressed their desire that they also wanted me to obtain National League for Nursing ("NLN") Accreditation for LIU in order to overcome an increasingly low enrollment, repeated denials of accreditation and avoid closure of the then inefficient and weak nursing education program of LIU. Since I was on the Board of Directors of the Southern N.Y. League for Nursing Constituent League of the NLN (the accreditating body of Nursing Education), and I had the necessary credentials to bring about NLN accredutation. A copy of my Curriculum Vitae ia annexed hereto and marked Exhibit O.

5. All references by defendant to their discriminatory acts prior to August 1990 is irrelevant to the issues in this action and is only referred to by defendant in a blatant attempt to confuse this Court and avoid a discussion of the true issues of this action. As set forth in my Amended Civil Complaint, the act which gave rise to this discriminatory claim occurred in or about August 1990 when LIU, through Walter Jones, Academic Vice-President, contacted me in writing and by telephone and informed me I would not be rehired for the academic year

commencing in September 1990. Mr. George Sutton, Director of Labor Relations also informed me of this fact at that time.

6. It is true that I commenced an Arbitration proceeding and filed an EEOC complaint with the Division of Human Rights concerning prior discriminatory acts of the defendant which occurred in or about August 1987 and August 1988. The prior discriminatory acts of defendant were also resolved by submission to the American Arbitration Association. The Award and Opinion of Arbitrator Walter L. Eisenberg is annexed hereto and marked Exhibit P. This Award and Opinion contains extensive discussion and detail concerning the rights of both parties and the terms of the collective bargaining agreement to which they are bound. The Consent Award contains no such discussion. However, the Consent Award (the content of which defendant bases the instant motion) which purports on itself to resolve the matter, does not accurately reflect my understanding of the resolution of that matter. I never agreed to retire or terminate my employment with LIU at any time. Indeed, after a verbal agreement was reached with me, I was told to leave the room with Ralph Knopf and I believe the Arbitrator, Walter Eisenberg, Douglas Catalano, Esq. (the attorney for LIU then and now) and George Sutton formulated the formal Consent Award. Contrary to Mr. Sutton's statements contained in paragraph 4 of his affidavit, at no time did I or anyone on my behalf agree to inclusion of any reference to any retirement in its final terms nor did I participate in its preparation. Indeed, immediately upon being informed of the content of the Consent Award, I contacted Madeline Litzky and George Sutton to voice my

objection to any reference to my retiring. See Exhibits H, I, and M, annexed herein.

THE CONSENT AWARD

7. I only agreed to withdraw my formal charge with the Human Rights and EEOC upon the filing of a revised Consent Award, the terms of which varied from the actual Consent Award by omitting reference to me retiring. After voicing my objection to the wording of the Consent Award, I was assured by Mr. Sutton of LIU that a revised Consent Award would be prepared to conform with my agreement and understanding of the settlement. In reliance on these representations, I withdrew my formal charge. Unfortunately, my trust in the representations made to me by Mr. Sutton was misplaced and the Consent Award was never revised to reflect my understanding of the settlement. Indeed, efforts were were made to meet with the Arbitrator to clarify its content; however, no such meeting ever occurred. See Exhibit M annexed hereto. I never agreed to retire or terminate my employment in or about August 1990. Rather, I was informed by George Sutton that the LIU Nursing Department would be closed. Madeline Litzky then stated, in the meeting, that if there was an opening , I would be rehired. At the hearing, based upon Mr. Sutton's representations, I agreed to be reappointed in the LIU Nursing Department in August 1990, if a vacancy existed. If no vacancy existed then I would receive an appointment in the Computer Department since I had also taught in that department. It is apparent that I was induced and coerced to believe there would be no employment opening for after the initial two (2) year period.

8. Mr. Sutton's recollection of the

circumstances surrounding the preparation of the Consent Award are inaccurate. As I stated above, I was asked to leave the room with Ralph Knopf while the terms of the Consent Award were being discussed. Mr. Knopf left the room with me and did not remain in the room to negotiate my agreement. After I left the room no one came out to talk or confer with me concerning my provisions of the Consent Award. Indeed, after I left with Mr. Knopf, I spoke with him briefly and then I left the premises. No further discussions were had with me. I never authorized Madeline Litzky to bind me to such an agreement nor did I ever agree to its content. See Exhibit N annexed hereto.

9. Immediately on my receipt of a copy of the Consent Award, in or about September, I contacted Madeline Litzky, field representative of NYSUT and George Sutton to voice my objection to any reference to my purported "retirement" at any time. The Consent Award did not reflect my uderstanding of what was said in the arbitration hearing while I was present. Madeline Litzky confirms this fact in her recent letter to my attorney (Exhibit N annexed hereto) wherein she states in reference to my conversation with her immediately after I received the Consent Award, "During that discussion, she objected to the use of the word "retirement." In my conversation with Ms. Litzky, she never reminded me or stated why the word retirement was used. Indeed, a complete reading of page 29 of my deposition (annexed as Exhibit H to defendant's motion) states in reference to my conversation with her immediately after I received the Consent Award, and reiterates this fact. Defendants reference to my deposition is incomplete

and out of context. A complete copy of the transcript of my deposition, with corrections, is annexed hereto and marked Exhibit G. Mr. Sutton assured me that the terms of the Consent Award would be changed to omit any reference to retiring. In fact, I was trying to have an arbitration hearing scheduled to clarify and revise the Consent Award. See Exhibit M annexed hereto. In truth and in fact, I never agreed to retire, quit or be terminated from employment by LIU after the two year period of employment through August 1990. My August 15, 1990 letter to Mr. James Gaspari (Exhibit I) states, in pertinent part: "I have never had intentions of retiring as of September 1, 1990."..."In addition, during my final hearing I spoke out and objected when the words 'retires from Long Island University' were used and told them at the hearing to say 'leaves'". This was in the event no employment position was available." See Exhibit I annexed hereto.

10. The only reason the Consent Award made any reference to my coverage of Blue Cross and Blue Shield and Major Medical benefits was in the event there was no vacancy available for my employment in August 1990. Only in such an event and under such conditions (which did not occur since there was a vacancy), was I to receive the same medical benefits I received as a full-time faculty member. Notwithstanding this fact, defendant breached its obligations under its agreement and refused to provide me with such medical coverage after my termination. As indicated by defendant's refusal to provide me with any health benefits subsequent to my termination, defendant never intended to abide by the Consent Award and, as such it was

fraudulent from its inception. I was not covered under any medical plan until more than one year after my employment was terminated, on or about November 26, 1991. I was not provided medical insurance coverage for more than one year despite LIU's legal obligation to do so and as a result I was forced to incur extraordinary medical expense. It was only after I was wrongfully terminated in August 1990 that I sought to receive the health and medical insurance coverage to which I was entitled. I never ratified or agreed to any reference in the Consent Award to "retirement". I only sought to protect my own financial interests by obtaining medical insurance coverage which defendant refused to provide.

11. Based upon the above, the date of the discriminatory acts of the defendant occurred in or about August 1990 when defendant failed and refused to rehire me for discriminatory reasons. Defendant wanted to and did appoint younger faculty, with less education, less experience and with less salary. Indeed, at the same time LIU sought to terminate my employment, Theodora Grauer, was granted continuing employment. See Exhibit Q. The reason Ms. Grauer was granted tenure and retained was because of her younger age and lower salary. Clearly for discriminatory reasons. In the past, defendant forced several female nurse-teachers to leave without tenure and some of them were Michele Vance, Cathy Manfredonia, Shirley Korasik, Maureen Monck, and Francine Thompson. My discriminatory claim was timely filed with the EEOC on November 15, 1990. The only reason my original EEOC Charge, number 16G-87-3898, was withdrawn was because George Sutton agreed with me and told me the Consent Award was inaccurate

and would be revised to reflect the true understanding of the parties by removing any reference to retirement.

"s/Doris Maher Ed.D,R.N."
Doris Maher

(This is Seal)
Sworn to before me this 5th
day of April, 1995.
"s/Robert A. Wagner" (This is a stamp)
Notary Public Robert A. Wagner
Notary Public, State of New York
NO. 30-4862559
Qualified in Nassau County
Commission Expires May 19, 1996

A-7

From Hearing Transcript Before the Honorable Frederic Block Dated July 8, 9, 1996:

(page 3 of transcript lines 13-25 on the day of July 8, 1996 in Open Court before Consent Award Hearing began):

It seems to the court that we might as well resolve this threshold issue because if it's resolved for the defendant in the litigation the case would not have to go forward for another two or three years, or some indeterminate period until the matter was resolved. And, on the other hand, if the court determines that the case go forward, it will go forward for discovery purposes on the age discrimination issue.

Now, the preliminary issue which I raised when we were last here is whether this factual inquiry can be made by the court or whether the plaintiff has demanded and is entitled to a jury determination since we are dealing with a

(page 4 of transcript lines 1-7):

factual dispute here. And I asked the plaintiff's counsel to advise the court whether there was any basis for a jury trial on the issue to submit papers, etcetera, and I haven't received any, so I assume that's tantamount to the plaintiff agreeing that the matter would go forward before the court; is that correct, Mr. Wagner?

MR. WAGNER: Yes, your Honor.

THE COURT: All Right.

July 9, 1996 Page 34 of transcript lines 15-25:

THE COURT: All right.

What we're going to do is I'm going to take a 15-minute recess and then I'm going to come back and render my decision, and I hope to explain it to you with sufficient clarity, and I will try to do that. So see you in 15 minutes.

(A recess is taken at this time.)
"s/Frederick R. Guerino, C.S.R."

PLAINTIFF REFERS SUPREME COURT TO JUDGE'S 20 PAGES OPINION AND DECISION WHICH FOLLOWED JULY 9, 1990 RECESS OF 15 MINUTES ABOVE. SEE BEGINNING PAGE 2 LINES 1-8 FEDERAL QUESTION ALLEGED SEX DISCRIMINATION THEN-RAISED AFTER JUDGE'S DECISION WAS ALREADY MADE. (A-4).

A-8

LONG ISLAND
UNIVERSITY

UNIVERSITY CENTER
BROOKVILLE,
NEW YORK 11548
March 7, 1990

Dr. Doris Maher
2337 Marlboro Street
East Meadow, N.Y. 11554

Dear Dr. Maher:

This is in response to your letter to Dr. Walter Jones. It was forwarded to me because the substance of the letter falls within the jurisdiction retained by Arbitrator Eisenberg. Enclosed for your information is a copy of the CONSENT AWARD issued on June 24, 1988.

We believe that we have complied with the spirit and the letter of the above award. We entered into the agreement with the understanding that the award would resolve all issues between you and the University. Please note item eleven in the award. Arbitrator Eisenberg explicitly retains jurisdiction over any disputes which may arise from implementation of the award. Thus, the "intelligent" means of resolving any disputes, which you refer to in your letter, rest with Arbitrator Eisenberg.

If you have any questions or comments please contact me.

Very truly yours,
"s/George S. Sutton".
George S. Sutton
Director of Personnel
& Labor Relations

cc: Dr. D. Steinberg
Dr. W. Jones

A-9

(Begin series of some letters to Jones):

January 23, 1990

Dr. Jones,
Administration,
C.W. Post Center, LIU,
Brookville, N.Y. 11548

(This is stamped)
RECEIVED
JAN 23 1990
LONG ISLAND
UNIVERSITY
OFFICE OF THE
PRESIDENT

Dear Dr. Jones;

I received your letter terminating my professional employment from the Nursing Department, C.W. Post Center, LIU as of August 31, 1990. I am deeply concerned and frustrated because I am not permitted to teach "one" nursing course in the last "3" semesters of teaching at C.W. Post. Previous to this semester, my name was published for public use to teach nursing at C.W. Post. As you know by my Curriculum Vitae, degrees and certifications that I am highly qualified in nursing education. I have a Doctorate in Nursing Curriculum and Teaching, Higher Institutions and Nursing Programs. This degree is from Teachers College, Columbia University, N.Y.C. I have a wealth of knowledge in administration and teaching nursing. I have been a Dean, Chairperson, Supervisor, and teacher of nursing in graduate, undergraduate, continuing education, cooperative education, associate degree and practical nursing. Although C.W. Post, LIU used me when National League Accreditation was needed, my wealth of knowledge and credentials were not utilized or tapped in the past 3 semesters. What a loss for C.W. Post in terms of grants, enrollment, creative curriculum, cooperative education, and monetary advantages of a large university like LIU, especially with my networking

abilities in politics and various activities in nursing. However, you did assign me to teach Computer Education of which I hold a second Master of Science from LIU (1987). I am an alumni of LIU with a 4.0 in Computer Science.

I am deeply troubled by the existing situations confronting me. I am Vice President elect of the Southern N.Y. League for Nursing (SoNYLN), constituent of the National League for Nursing (NLN), the accreditating body for Schools of Nursing nationally. I have been an elected Officer to the Executive Board since 1980 and continue to be elected by my peers. We have approximately 800 members in 16 counties from Albany to the tip of L.I. I have been unable to attend SoNYLN meetings this past semester. These meetings occur every second thursday of the month in NYC at NLN headquarters and Hunter College. The dates of the meetings this spring semester are: Feb. 8th, March 8th and April 12th 1990. Incidentially, during the NLN accreditation process, I was allowed to attend Executive Board meetings and offered traveling expenses to NYC by the Nursing Department in order for me to promote the C.W. Post Nursing Department for NLN accreditation. I am asking your permission to attend these meetings this semester, 1990. I have computer assigments and practice lab exercises that I have designed that I would give to my students and with the approval of Dr. Mike Byrnes (Ed. Tech) someone could take attendance.

As you know, the NLN gave national accreditation to the C.W. Post Nursing Program with my dedication and devoted assistance both politically and academically. e.g. officer of the SoNYLN

and writing of the accreditation report. Currently I am editor of the SoNYLN Newsletter which reaches many institutions and all of our members. This year there is a drive to speak-out and review curriculums in nursing regarding content and quality. An Open Forum is being held by the SONYLN in the near future with many leaders in nursing attending. This Forum is attended by special invitation only. Many of these leaders in nursing are my friends. The purpose of the Forum is to speak-out on nursing curriculum and problems. I will attend as Vice President of the SoNYLN and a leader in nursing.

Please rethink LIU's advantage of having me as a faculty member. I do not wish to be terminated and never did. I must continue to teach to support myself. Quite recently my step-father died of Cancer on January 10, 1990 and my mother who is 86 years old needs my continued monetary support to exist.

I am also Vice President elect of Sigma Theta Tau, International Honor Society for Nurses, Adelphi University chapter, Alpha Omega. These Executive Board meetings are held at night with special nursing conferences throughout the year. I do attend and participate in these events to promote scholarship and research in nursing. My professional activities help LIU to be recognized in nursing and the health science arena. No one can deny the importance of membership in professional organizations and the honor of being elected by their peers nationally and locally as I have been and continue to be.

In addition to my sorrow and stress from being terminated from LIU, I recently spoke to the personnel department LIU regarding my medical

benefits on termination. I was sadly informed, much to my surprise that there was none, only $50,000.00 major medical given to "retirees". Being well informed on the cost of medical care, I know how little this amount will pay for illness. I honestly believed that I was to receive full medical coverage. This coverage would be paid as it is now as an employee after termination until I die. I truly believed that I would receive paid Blue Cross, Blue Shield and major medical benefits continuing after August 31, 1990. I was also informed that I was a retiree which I am not. I am deeply distressed over this bad and degrading news because as you know and everyone else knows at LIU that I am not a "retiree" and can not be such because of the cost of living. The reason for the termination from LIU was the administration not giving me tenure after I had been passed by the tenure committee and had all the necessary scholarship, research and professional activity required for tenure. My statement to the Human Rights Department, N.Y. states that I will receive paid Blue Cross, Blue Shield and major maedical benefits. I believed my health benefits would continue after termination as they were before termination.

Furthermore, my monetary contributions into my pension fund for Sept., Oct., Nov., and Dec. 1989 according to TIAA CREF do not reflect the amounts I was under the impression would be put into my pension fund to help raise my small pension fund. Moreover, I recall one administrator telling me that the nursing program at C.W. Post was being phased out. But the nursing program is not being phased out.

Please rethink my appointment and

reappoint me for 1990 - 1991. I need the work at C.W. Post as a full time faculty member at LIU so that I can earn full medical benefits, and my continual monetary returns. I have the credentials to help LIU. Your termination letter leaves me with no LIU professional income and now almost no medical benefits and a pension which could support no one. I have given many years of professional service to LIU and in time of need for accreditation, representatives of LIU sought me out to come to work here again to get the nursing program accredited which I did. The nursing program was accredited nationally by the NLN. I was used for this purpose and then terminated. As true as I am writing this letter to you, at the time of accreditation, there was not a more qualified person in nursing than me. Why, then do you forget so easily all my efforts and achievements?

The agreement with LIU is now in my belief to be written and worded with fraudulent intent to mislead me and prevent me from receiving the award that I honestly believed that I would receive on termination from LIU. Please assist me with the content of this letter so that we can resolve this matter intelligently without my having to seek advice and counsel from the Human Rights Department of N.Y. State, attorneys and others who were involved in this stressful problem. I am asking you to please respond to me as soon as possible because I will have to resolve this matter shortly by seeking assistance in various ways. My future is at stake.

Sincerely,

"s/Doris Maher R.N., Ed.D."

Doris Maher R.N., Ed.D.

Associate Professor Nursing

cc Dr. Steinberg, President
cc George Sutton, Director of Labor Relations
cc Dr. Ralph Knoff, C.W. Post Collegial Federation
cc Personnel file of Dr. Doris Maher, Associate Professor

A-9 (Another letter to Jones):

August 15, 1990

Dr. Walter Jones,
Administrator,
CW Post Center,
Brookville, NY 11548

Dear Dr. Jones:

I wish to inform you that I am extremely frustrated by your telephone call to me today regarding my health benefits. The terms of the Arbitration agreement have not been held up to the extent of my understanding. My medical benefits have been denied. As you well know and all of my records in my personnel folder will verify, I am not and never intended to be a retiree. The wording in the arbitration agreement is fraudulent by using the words "when Dr. Maher retires from Long Island University". Furthermore, I have requested from you and others employed by the University, a teaching position but you have discriminated against me again and have hired new faculty instead of giving me a teaching assignment.

You have denied me the right to have insurance coverage through the group of which I would pay until we could come to a reasonable decision on the benefits that I thought the University had agreed to. I am terminated as of September 1, 1990. According to the COBRA law 1986, I am protected against such treatment by federal law. I have never received medicare and have never filed for the

same. I have no intentions of retiring and never did have. I am also being discriminated against in terms of unemployment. I intend to collect unemployment because I have no job at the University as of September 1, 1990.I requested a copy of your letter which terminated me earlier this year. Please send it to me as soon as possible.

I wrote you a letter dated January 23, 1990, I am enclosing a copy with this letter for my personnel file and for your attention once again. Once more I wish to receive my health benefits as written in the Arbitration agreement. In addition, I will need this done by September 1, 1990. You are quite concern about the wording of the Arbitration Agreement and so am I because LIU has agreed to give me Blue Cross and Blue Shield and Major Medical. If this is incorrect as you say then the whole agreement is null and void. Your interpretation of parts of this agreement are different than other parts. You are calling me a retiree (not so) but then you are saying there is no Blue Cross and Blue Shield. My question to you is: Why is one thing right to you and the other wrong.

In all fairness, this agreement is fraudulent in several respects. I have decided to retaliate through the Human Rights and the Federal Government. You, as a representative of LIU have denied me health insurance coverage through the group plan because as you put it, I am 65 years old and have to file for medicare. This statement infringes on my human rights and discriminates against me because of my age. I would hope that I still have a choice under the COBRA law.

I tried to avoid all of this but due to the interpretations of the law and my

needs for health benefits and a job. I have no recourse.

Sincerely,

Doris Maher, EdD, RN

cc Dr. Steinberg, President
cc Dr. Ralph Knopf, CW Post Collegial Federation
cc Personnel File of Dr. Doris Maher

A-9 (Another letter to Jones):

August 29, 1990

Dr. Walter Jones,
Administrator,
CW Post Center,
Brookville, NY 11548

Dear Dr. Jones:

I was deeply distressed and suffered a great deal of mental anxiety today when I entered my faculty office in the Nursing Department. My name had been removed from my office door, the office had been stripped of my personal belongings and no one had any knowledge of their whereabouts. There were new faculty names on the door, three of my personal pictures were taken from the walls, my personal desk ornaments given to me by my daughter were missing and also ones that I had purchased were missing. Some of my books were taken and my personal papers were removed. The deck top was bare except for a stapler and a calendar.

I believe that you should be able to finally recognize by this example, the abusive treatment that I have been receiving from Theodora Grauer, Chairperson of Nursing and other faculty in the Department. This discriminative and abusive behavior even though I have not been allowed to teach my nursing profession at CW Post Center. For example for the last two years, nursing students have been informed when they ask

for my recommendation, that I was no longer at CW Post Center.

I would like to remind you that for the next four years I have been elected President of the Southern NY League for Nursing, National League for Nursing. My major goal is excellence in nursing schools which includes fair and decent treatment of faculty. Professor Grauer who had no decent explanation of why my personal belongings were missing from behind locked doors, should make you wonder what kind of faculty represent the nursing department of CW Post Center. I deserved a phone call from her or at least the secretary to notify me to pick up my personal belongings.

I will review the issues with you which have demonstrated to me discriminative and abusive treatment: the ambiguous and fraudulent Arbitration Agreement which does not reflect my understanding of my award. I did not agree to the concept of "waives any claim to ...and/or reappointment". I did believe that I would receive "Blue Cross-Blue Shield and Major Medical" as if I was continually employed by CW Post Center and for my lifetime. In addition, I am not retiring from CW Post Center as of September 1, 1990, I am being terminated. Moreover, I would like the return of my personal belongings purposefully taken from my locked faculty office. Furthermore, I can not excuse nor will I continue to accept anymore discriminative and abusive treatment from CW Post Center, LIU representatives.

Finally the bottom line is: On September 1, 1990 I have no job to teach computers or nursing, no hospitalization, I am not retiring from CW Post Center, as you well know, you have terminated me. In addition, Professor Grauer is

responsible for the loss of my personal belongings, degrading and humiliating me along with discriminating against me. Again, I expect her and/or the University to return my missing personal belongings. These items mean alot to me.

Please place a copy of this letter which is enclosed into my personnel file.

Sincerely,

Doris Maher EdD, RN

cc President D. Steinberg
Ralph Knopf, President CW Post Collegial Federation

A-9 (Another letter to Jones):

September 4, 1990

Dr. Walter Jones,
Administrator,
CW Post Center, LIU,
Brookville, NY 11548

Dear Dr. Jones:

I am requesting you to provide me with Blue Cross-Blue Shield and Major Medical. These health benefits are awarded to me in the Arbitration Consent Award, Case No. 17-300-0025-88, dated June 24, 1988. The University has not provided me with the above benefits. I was terminated September 1, 1990. I do not at this time have the above coverage.

I expect you to provide me with this coverage immediately. If this is not done I will have a proper investigation done, by an outside source available to me.

Sincerely,

Doris Maher Ed.D., RN.

Doris Maher Testimony July 8, 1996:

(page 64 of transcript lines 8-13):

Ms. Maher: A. Did anyone ever tell me that? That I would be? It was my understanding of this consent award that was supposed to be in there. That was my understanding of it. I said in the meeting -- Madeline Litzky said it, said I would be hired if there was an opening. George Sutton said to me that the nursing department was being closed.

(page 64 of transcript lines 21-25):

Q. And it is your contention that you would be reappointed continually, as long as there would be an opening in either of those departments?

Ms. Maher: A. Yes. That was my hopes.

(page 65 of transcript lines 1-8):

Ms. Maher: A. The understanding of the award that I would be appointed. How many years after that, I probably still would have to go to grievance over tenure, it would have been another grievance with the union, and then we would go through that again another year. But they would still have to give me another year after that. So whatever we're looking at, we're looking at two years. Or a year beyond the two years.

(page 11 of transcript lines 5-16):

Q. Do you recall the substance of the conversation as to what was discussed concerning your settlement of that matter?

Ms. Maher: A. The settlement was that I was supposed to get Blue Cross/Blue Shield and major medical as I was receiving as an employee when I left C.W. Post not retiring. And the word was brought up by Mr. Catalano that I was retiring from L.I.U., I objected to it in the meeting. I said, "I am not retiring from L.I.U.", and I told the arbitrator

Eisenberg that I'm receiving Blue Cross, Blue Shield and major medical. Now, that's primary insurance and major medical.

A-11

Madeline Litzky Testimony: July 8, 1996

(page 100 of transcript lines 15-18):

Q. And when did you begin to work with this organization?

Ms. LITZKY: A. February 1, 1987

Q. Do you have any--are you an attorney?

Ms. Litzky: A. No, I am not.

(page 103 of transcript lines 7-11):

Ms. LITZKY: A. Ralph Knopf does the grievance process, the two or three stages of the grievance process. When there is not a satisfactory resolution at the grievance process, he files a demand for arbitration with the triple A. We have a list of panels --

(page 106 of transcript lines 24-25, page 107 lines 1-4):

Q. What did you say to Mr. Sutton when he told you she would not be precluded from additional employment? What was your understanding of what was meant?

Ms LITZKY: A. Precluded meant that there was a possibility, but that they weren't promising it to her and it wasn't being put into the settlement.

(page 109 of transcript line 3-14):

Q. Well, did there come a time when Dr. Knopf left this arbitration meeting either with or without Mrs. Maher, to your recollection?

Ms. LITZKY: A. He left, yes.

Q. And was the content of the consent award formulated after he left?

Ms. LITZKY: A. No. Ralph is the President of the Collegial Federation and my role, basically, is that I work for the president. I would not do anything if he weren't there.

Q. Were you always at the meeting at the same time he was?

Ms. LITZKY: There might have been moments, as in any case...

(page 114 of transcript lines 4-9):

Q. Did he read the actual consent award?
Ms LITZKY: A. He read from thw notes that were provided to him of each of the items that were going to be in the consent award.
Q. And who provided him the notes?
Ms. Litzky: A. Mr. Catalano and myself.
(page 109 of transcript lines 19-25)
(page 110 of transcript lines 1-5):
THE COURT: Q. After the consent award was issued, did there come a time when Ms. Maher contacted you to express her concerns about its content?
Ms. LITSKY: Yes, she did.
Q. And what were those concerns?
Ms LITSKY: She raised the question concerning the retiree. The terminology of the retiree. And I explained again that that was used so she could have access to that insurance.
Q. Was that term ever used in the context that she would be required to retire after two years?
Ms. LITZKY: The word "retires" was used so that she could have that health insurance.
(page 110 of transcript lines 9-13):
THE COURT: Q. Do you recall whose decision it was to include th word "retire" in the consent award?
Ms LITZKY: No, I don't, exactly. I know that it had to be in there. We felt that it had to be in there because that would be the way she would get that assurance.
(page 110 of transcript lines 17-25)
(page 111 of transcript line 1):
THE COURT: Q. Was it your understanding that she would be considered to be a retiree for purposes of being able to get the health insurance?
Ms. LITZKY: A. It was my understanding that she would be considered to be a retiree for the purposes of being able to get the health insurance.

THE COURT: Q. But, you had just stated previously that there was a possibility that she would be continue employment, didn't you?
Ms. LITSKY: A. They had not closed the door to her for that, and in which case she would obviously have the insurance of an active employee.
(page 111 of transcript lines 9-13):
Q. What terms did you discuss with Mr. Sutton that would be either changed or conformed to your understanding?
Ms. LITZKY: I indicated to Mr. Sutton that I would like him to consider the possibility of giving her the health insurance that she would have if she were actively employed.
(page 111 of transcript lines 20-24):
Ms. LITSKY: A. Well, I think that the retirees only have a small portion of it.
Q. Major Medical?
Ms. LITZKY: A. Major Medical not the day-to-day doctor.
(page 112 of transcript lines 11-20):
Q. But this Blue Shield/Blue Cross medical package -- I'll call it the medical package that was written into the consent award -- is something that nobody gets in the normal course of events? Whether they're retired or whrther they're working, its a special type of benefits that only Mrs. Maher would get by reason of the consent award? Do I have it down right?
Ms. LITZKY: A. No. It was meant to be the benefit that people get if they retire with at least ten years of service to the university.
(page 105 of transcript lines 16-22):
Ms. LITZKY: A. When I indicated to George Sutton that the concerns was the health insurance, he said that he thought that we could work around that and treat her as though she had been there ten years.

And at that time he also mentioned that if she so chose, they could double up somewhat on the pension contributions so that her pension would be roughly what it would have been had she been there for ten years.

A-12

August 15, 1990

James Gaspari,
Director NYSUT,
500 Northern Boulevard,
Suite 123,
Jericho, N.Y. 11753

Dear Mr. Gaspari:

I wish to inform you that I am extremely frustrated by the interpretation of my Arbitration Agreement brought about my union representative from your office, Madeline Litzky. She was to be my counsel so to speak and represent me at the hearing with C.W. Post Center. I would have been better off with my own attorney to protect me from my employer's team of counsels.

In my case, I find myself being called a retiree by Dr. Walter Jones and others representing C. W. Post Administration and personnel staff. In addition, I am being discriminated against because of my age. I have been told over and over again that I am 65 years old and must retire and apply for medicare. Let me say to you right now I have never applied or received any benefits from medicare. Furthermore, I have never had any intentions of retiring as of September 1, 1990. Aetna who is the carrier of health insurance for CW Post, LIU would give the medical insurance under the group plan but CW Post, LIU will not do this for me.

In addition, during my final hearing I spoke out when the word "retires from Long Island University" was used and told them at the hearing to say "leaves". I was not given a copy of this agreement until 2 months later after numerous calls to Madeline Litzky. The excuse that she gave me was that it was sent to the

state. I have the original envelope that it was sent in. Moreover, it was my candid impression that I was to receive full health coverage if I drop my Human Rights suit against LIU. Therefore the agreement read that I would receive "Blue Cross-Blue Shield and Major Medical Benefits" from LIU. I spoke to Madeline Litzky and George Sutton about the word "retires" and they both informed me, that it did not mean that I was retiring. In fact both parties and everyone else at the University knows that I was denied tenure by Administration and not the faculty tenure committee. I had asked to continue to teach at CW Post Center.

The interpretation of my agreement by Dr. Jones and others at CW Post is that I am 65 years old and told to go on Medicare and retire. This is what I see as discrimination in the highest degree. I also feel that the union knew of my interpretation of the agreement and did not give me proper legal counsel to protect me from this problem. After a discussion with a labor lawyer, I have been informed that I should sue both the University and the Union for this misrepresentation.

In the final analysis, I have no recourse but to consider this action. I also find it necessary to retaliate through the Human Rights Department og NYS. The whole agreement is fraudulent and without proper counsel, I am unprotected. The bottom line: I am without a job on September 1, 1990 and I have no medical insurance and I can not collect unemployment with such a ambiguous Arbitrator's Agreement.

There is much more to say to you but these statements will have to wait for legal counsel. I am appalled by the treatment that I have received from

Madeline Litzky, George Sutton and Dr. Jones. Enclosed is a letter that I wrote to Dr. Jones in January and a letter that I wrote today.

Sincerely,

"s/Doris Maher Ed.D, R.N."

Doris Maher Ed.D, R.N.

A-12

September 4, 1990

James Gaspari
Director, NYSUT,
500 North Broadway,
Suite 123,
Jericho, NY 11753

(This is stamped):
RECEIVED
Sept 6 1990
NYSUT RO
Jericho NY 11753

Dear Mr. Gaspari:

I am requesting you to my Arbitration Consent Award, Case No. 17-300-0025-88. This award was dated June 24, 1988. This agreement to my understanding requires that Long Island University, CW Post Center, Brookville, NY provide me with Blue Cross-Blue Shield and Major Medical. The University has not done this and I am without the coverage that was awarded to me. I am terminated as of September 1st, 1990. I do not at this time have the above medical coverage.

I expect you to enforce this agreement immediately. If you are unable to do this for me let me know. I will then have the proper investigation done by an outside source available to me.

Sincerly,

"s/Doris Maher, Ed.D., RN."

A-12

NYSUT united teachers
New York State United Teachers
Affiliated with American
Federation of Teachers AFL-CIO

Nassau Regional Office
Jericho Atrium
500 North Broadway
Jericho NY 11753
(516) 938-4871

September 13, 1990

Dr. Doris Maher
2337 Marlboro Street
East Meadow, NY 11554

Dear Dr. Maher:

I received your September 12th correspondence and I believe it is imperative that you and I meet with Ralph Knopf to discuss your request to "enforce"the arbitrators consent award.

I will be out of town the entire week of September 17th and I suggest that we meet in my offices on Wednesday, September 26th at 11 a.m. Please call my secretary, Jo Valentino, at 938-4871 to confirm the time and date.

Sincerely,

"s/James Gaspari"
James Gaspari
Regional Staff Director

JG:jv
cc Ralph Knopf, Pres.C.W.P.C.F.
Madeline Litzky

A-12

NYSUT united teachers
New York State United Teachers
Affiliated with American
Federation of Teachers AFL-CIO
Nassau Regional Office
Jericho Atrium
500 North Broadway
Jericho, NY 11753
(516) 938-4871

November 19, 1990

Dr. Doris Maher
2337 Marlboro Street
East Meadow, NY 11554

Dear Dr. Maher:

Jim Gaspari shared with me your letter of November 15, 1990. We are interpreting your letter to mean that you want us to represent you at an arbitration hearing for the purpose of clarification of the consent award. I have notified the American Arbitrators Association that we need a hearing date. As soon as I hear from AAA, I will be in touch with you.

If we are incorrect in our interpretation, please notify me as soon as possible.

Sincerely,
"s/Madeline Litzky"
Madeline S. Litzky
Labor Relations
Specialist

MSL:jv
cc Ralph Knopf, Pres. CWPCF
James Gaspari
Khadijah Muhammad, Esq.

A-13

Collective Bargaining Agreement Between Long Island University and the C.W. Post Collegial Federation 1985-88.
(Pages 69-70 Article XIX FRINGE BENEFITS Section 5. MAJOR MEDICAL EXPENSE INSURANCE):

(a) The University shall continue to provide a Major Medical Insurance plan covering the unit members on noncontributory basis, with the following improvements effective as of September 1, 1980:

(i) Increase of maximum coverage to $250,000,

(ii) A cash deductible of $100 per person up to a maximum of $300 per family, and

(iii) Termination of coinsurance (80% - 20%) after $10,000 benefit payment
The University shall continue to cover retirees who completed ten (10) years of employment under the major medical plan, and effective September 1, 1980, shall increase the maximum benefit to $50,000.

NYSUT UNITED TEACHERS
Nassau Regional Office
Jericho Atrium
500 North Broadway
Suite 123
Jericho, N.Y. 11753
516-938-4871
NEW YORK STATE UNITED TEACHERS
Affiliated with American Federation of Teachers AFL-CIO

October 21, 1994

Robert A. Wagner, Esq.
1615 Northern Blvd.
Manhasset, N.Y. 11030

Re: Doris Maher v. Long Island University

Dear Mr. Wagner:

Please consider this letter to be my response to your letter of October 14th.

The statement in your second paragraph is inaccurate as the Consent Award does reflect my understanding of the settlement reached at the arbitration hearing on June 20, 1988. I told that to Dr. Maher when she called after receiving a copy of the award.

During that discussion, she objected to the use of the word retirement. I reminded her of the reason it was used.

During our collective attempts to settle this matter, Dr. Maher had been asking for three years of additional employment and the University was willing to only guarantee two. When I asked her why she wanted three, she told me that with three she would have ten years of service to the University and qualify for the health insurance.

The University, when informed of her concern, agreed as part of the settlement to give her the insurance she would have been entitled to after 10 years of service. For your convenience, I have

enclosed a copy of the language from the 85-88 agreement which relates to health insurance coverage for retirees.

During the conversation I also reminded her that the CWPCF and LIU were involved in collective bargaining since the contract was due to expire on 8/31/88. The Federation had a proposal to improve the retiree health insurance. Since she would be completing her employment under the new contract which hadn't been yet negotiated, we all believed it best to refer to the insurance in general terms.

After I explained the above to Dr. Maher and specifically the use of the term retirement was to insure her health insurance coverage, she did not offer any objection and/or concern about the content of the Award.

I hope the above information is helpful to you in your representation of Dr. Maher.

Sincerely,

"s/Madeline Litzky".

Madeline S. Litzky

Labor Relations

Specialist

A-15

RICHARD V. RAPPAPORT
ATTORNEY AT LAW
98 CUTTER HILL ROAD
GREAT NECK
NEW YORK 11021

August 24, 1990

Dr. D. Steinberg, President
Long Island University
C.W. Post College Center
Administration Building
Northern Boulevard
Brookville, N.Y. 11548

Re: Dr. Doris Maher

Dear Dr. Steinberg:

I have been retained as attorney for Dr. Doris Maher, and am writing to you concerning the failure of your college COBRA for her medical benefits. This is clearly in violation of Federal law. In accordance with paragraph five of the consent award dated June 24, 1988 it indicates that she is to be covered by the Blue Cross-Blue Shield and major medical benefits provided by the employer. This is what was agreed upon by the parties.

It is my understanding that an arbitration hearing is scheduled for September 11, 1990 at which time the two issues before the arbitrator are (1) the fact that your college has blatantly refused to offer Dr. Maher a position for the 1990/91 academic year agreed upon by the parties and (2) the fact that Dr. Maher is entitled to the above referenced medical benefits, i.e. Blue Cross-Blue Shield and major medical benefits upon the termination of her employment, and not when she retires.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

"s/Richard V. Rappaport"

Richard V. Rappaport

A-15: (2nd Letter):

RICHARD V. RAPPAPORT
ATTORNEY AT LAW
98 CUTTER HILL ROAD
GREAT NECK
NEW YORK 11021

September 17, 1990

Dr. D. Steinberg, President
Long Island University
C.W. Post College Center
Administrative Building
Northern Boulevard
Brookville, N.Y. 11548

Re: Dr. Doris Maher

Dear Dr. Steinberg:

I have yet to receive a response to my letter dated Agust 24, 1990. Please reply to the two issues before the Arbitrator, which are yet unresolved. Thank you for your courtesy and cooperation in this matter.

Very truly yours,

"s/Richard V. Rappaport"
Richard V. Rappaport

cc: Dr. Doris Maher

A-16

September 21, 1990

National Labor Relations Board,
Region 29,
75 Clinton Street,
Brooklyn, N.Y. 11201-4201

Dear Director:

I am including this letter with the signed statement against the Union who represented me in an arbitration LIU C.W. Post Center, Brookville, N.Y. I tried to reach someone in your office today but was unable to do so. Therefore, I signed the charge as time is of the essence to me. I have no hospitalization insurance and major medical benefits to date.

I am also enclosing a copy of the Arbitration Consent Award for your information. I do not want to open reopen this Arbitration Hearing because they (the Union and LIU) to change the agreement to suit them. That is, they want to say there is no Blue Cross-Blue Shield for retirees only $50,000.00 major medical. Therefore, I can not receive this benefit. I want you to know that my main reason for agreeing to this award was that I would receive the Blue Cross-Blue Shield and major medical (worth 1 million) for my lifetime. This agreement is fraudulent because now LIU representatives and the Union tell me that there is no such medical coverage for me. By-the-way, I am not a retiree as they try to infer in this award. Dr. Jones, in a recent telephone conversation with me, told me that the agreement says that I am a retiree and I must go on medicare - "there is no Blue Cross-Blue Shield for me".

After talking to your office representative, I sent two certified

letters to James Gaspari, Director of NYSUT, telling him to enforce this Arbitration award and this has still not been done. What can I do now to have this agreement enforced? I did go to a lawyer, he wanted $3500.00 for a retainer fee. I can not pay this amount. He charged me $300.00 for one consultation hour and one letter, I do not have a copy of the letter (I requested same). James Gaspari did write me a letter, September 12, 1990, asking me to meet with him and Ralph Knopf (President C.W. Post Federation) on September 26th. I wrote back once more and told him to enforce the agreement.

Again, I know what they plan to do if I reopen the Arbitration. I do not want to have the Union and LIU change this agreement so that I receive no Blue Cross-Blue Shield. I want you to know that this is the main reason that I agreed to this consent award.

Sincerely,

Doris Maher, EdD, RN

P.S.
Mr. Kern talked to me today from your office. I have decided to mail this letter and the Arbitration agreement because I hope it might expedite this matter for me.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

DORIS MAHER

Plaintiff,

-against-

LONG ISLAND UNIVERSITY AT C.W. POST CAMPUS,

Defendant.

----------x

AFFIDAVIT

Civil Action

No. CV 92 3598(FB)

STATE OF NEW YORK)
ss.
COUNTY OF NASSAU)

GEORGE S. SUTTON, being duly sworn, deposes and says:

1. I am University counsel of Long Island University (the "University"), defendant in the above-referenced action and I am familar with the facts herein. I submit this affidavit in support of defendant's motion, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for an order granting summary judgment in favor of the defendant on the grounds that: (1) the Court lacks subject matter jurisdiction over the claims of plaintiff Doris Maher because plaintiff failed to file a charge with the Equal Employment Opportunity Commission ("EEOC") or the New York State Division of Human Rights within 300 days of the alleged discriminatory act; (2) plaintiff's claims of age discrimination are barred by the statute of limitations because plaintiff failed to file her age discriminatory claims within three years of the alleged discriminatory act; (3) plaintiff has provided no evidence of discriminatory retaliation; and (4) plaintiff waived and released her claims pursuant to a June 24, 1988 Consent Award.

2. In or around June 1988 I was Director of Personnel and Labor Relations for the University, and I was involved with all aspects of the grievance filed by Doris Maher. Specifically, I was involved in a negotiation to settle a grievance brought by Doris Maher against the University which culminated with an agreement embodied in a Consent Award, dated June 24, 1988, issued by Arbitrator Walter L. Eisenberg, a copy of which is annexed to the accompanied affidavit of Neil G. Sparber as Exhibit D.

3. During the investigation Dr. Maher was represented at all times by Madeline Litzky for New York State United Teachers, the union representing Dr. Maher, and by Ralph Knopf, president of Local 3517, N.Y.S.U.T. Ms. Litzky and Dr. Knopf and I were together in a room negotiating the terms of the Consent Award while Dr. Maher waited outside. There was no issue with respect to most of the terms of the Consent Award. The one issue about which there was a question concerned the health benefits to which Dr. Maher would be entitled. Ms. Litzky and Dr Knopf asked me what benefits Dr. Maher would receive, and I replied that I did not know the exact benefits but Dr. Maher would be entitled to receive whatever benefits were provided to retirees of the University.

4. Ms. Litzky would shuttle back and forth between talking with me and conferring with Dr. Maher. Ms.Litzky and Dr. Knopf returned and proposed a provision concerning health benefits, and I stated that Dr, Maher would receive whatever other retirees received. Eventually, Dr, Maher agreed, and the Consent Award provided that "when Dr. Maher retires from Long Island University, she is to be covered by Blue

Cross/Blue Shield and Major Medical benifits provided by the employer to retirees, as provided in the collective bargaining agreement for retirees who have 10 years of service at Long Island University." See Exhibit D to the Sparber Aff., #5.

5. After the provision for health benefits was agreed to, Ms. Litzky and Dr. Knopf told me that Dr. Maher agreed with the terms of the Consent Award, and Ms. Litzky, Dr. Knopf and I communicated the terms of the Consent Award to Arbitrator Eisenberg, who incorporated those terms into the Consent Award. Dr. Maher can not dispute that she was represented at all times during negotiations leading up to the Consent Award by Ms. Litzky and Dr. Knopf. Any allegations by Dr. Naher that she was coerced or induced into entering into the Consent Award are belied by her representations by Ms. Litzky and Dr. Knopf.

"s/George S. Sutton"
George S. Sutton

(This is a Seal)
Sworn to before me
this 24th day of February, 1995
"s/Karen A. Schoonmaker"
Notary Public
(this is a stamp)
KAREN A. SCHOONMAKER
Notary Public, State of New York
No. 02SC5028093
Qualified in Queens County
Commission Expires May 23, 1996

A-18

George Sutton Testimony July 9, 1996

(page 6 of transcript lines 17-24):

Q. And could you plaese tell the Court why in fact the university wanted to settle the arbitration?

GEORGE SUTTON: A. Well, following the day of the first hearing, we saw the same arguments regarding procedural violations coming up again, so we decided that university decided that it would be in our interest to attempt to settle the arbitrationin a manner would bring finality to the matter of Dr. Maher is employment with the university.

(page 18 of transcript lines 7-25):

Q. Lets go back to the meeting in June of 1988 where you state the settlement and the terms of the consent award were formulated. Could you tell us again who was present in that meeting?

Mr. SUTTON: A. Certainly, I was, Dr. Maher was, Dr. Ralph Knopf, Madeline Litzky, and Douglas Catalano.

Q. Was Dr. Maher present throughout the entire conversation?

Mr. SUTTON: A. Yes.

Q. And then it is your contention now that Dr. Maher was also there when the settlement terms were relayed to the arbitrator, Mr. Eisenberg?

Mr. SUTTON: A. Yes, absolutely.

Q. Are you sur of that?

Mr. SUTTON: A. Yes, positive.

Q. Did you ever make any statements contrary to what you are stating today to your recollections?

Mr. SUTTON: No, not to my recollection.

(Continued page 19 lines 1-25):

Q. I show you what was being marked as plaintiff's exhibit 7. Can you identify the document?

Mr. SUTTON: A. Yes it is an affidavit that -- its my affidavit dated 24 of

February '95.
Q. Is that the same affidavit that was submitted with this moyion for summary judgment?
Mr. SUTTON: A. Yes, I believe so, yes.
Q. Could you read through that affidavit and see if it says anything with regard who was present? Specifically, I will point your attention to paragraph three.
Mr. SUTTON: A. Yes.
Q. Who does it state was present?
Mr. SUTTON: A. Well, when we say we were together in a room here, I'm not talking about the arbitrator.
Q. Who was together in the room?
Mr. SUTTON: A. Oh, it was Ms. Litzky, Dr. Knopf and I.
Q. Dr. Maher was not there was she?
Mr. SUTTON: A. No, and she was not there when I spoke to Madeline Litzky on the telephone on numerous occasions working out the terms of the consent award.
Q. You just stated previously that she was present at the meeting when the settlement was discussed?
Mr. SUTTON: A. No, no, I thought the question you asked me referred to the meeting in which the arbitrator was providing where we went over collectively all the terms of the settlements
(continued page 20 lines 1-25)
Mr. SUTTON: A. agreement.
Q. We will get to that too, in the next paragraph.
Mr. SUTTON: A. No, that's when everybody was present. We had many discussions about the terms we were bargaining, and we were negotiating it, and in many, many cases the grievant or the client is not necessarily present during all of the disussions.
Q. Isn't true that at some point during that meeting in June of 1988 Dr. Maher left the meeting?

Mr.SUTTON: A. Well, you will have tell me which meeting you are referring to.
Q. June 20th, when this settlement was discussed?
Mr. SUTTON: A. There were several meetings on that day by your definition of the meeting. I mean, there was a hearing; Is that the meeting you are referring to?
Q. No, not the hearing.
Mr. SUTTON: A. Well, there were meetings on that day not in the presence of Dr. Maher, certainly.
Q. And then when the settlement was conveyed to the arbitrator, Mr. Eisenberg, Dr. Maher was not present then either was she?
Mr. SUTTON: A. No, she was.
Q. Can you continue reading your affidavit, then?
Mr. SUTTON: A. Certainly.
Q. I believe it is the next paragraph four after that.
(Continue page 21 lines 1-25)
Mr. SUTTON: A. Yes.
Q. Who does it say conveyed the settlement terms to Mr. Eisenberg?
Mr. SUTTON: A. As I already testified Ms. Litzky.
Q. Who does the affidavit state?
Mr. SUTTON: A. It says Ms. Litzky, Dr. Knopf, and I communicated the terms of the award to Mr. Eisenberg. I failed to mention also Douglas Catalano.
Q. Your affidavit speaks for itself.
Mr. SUTTON: A. Sure.
Q. Now, with regard to the consent award, isn't it true that the reference to Dr. Maher retiring was inserted in there for the purpose to ensure that she would be receiving the medical benefits that a retire would receive?
Mr. SUTTON: A. I'm sorry, I don't understand the question.

Q. Was the intent of the agreement to ensure that Dr. Maher was going to receive the medical benefits that a normal retiree of the college would receive?
Mr. SUTTON: A. Yes, that's why the word is there, yes.
Q. When Dr. Maher's employment was terminated in September of 1990, to your knowledge did she receive any medical benefits from the college?
Mr. SUTTON: A. I do not believe she did.
Q. She did not?
Mr.SUTTON: A. No, she did not.
(Continued page 22 lines 1-25)
Q. Although according to the consent award she was supposed to?
Mr. SUTTON: A. Yes, well she refused to retire was my understanding.
THE COURT: Q. In other words, she wasn't complying with her bargain, so then you didn't give her the benefits that were contained in the consent award because she refused to retire or leave the university?
Mr. SUTTON: A. Well, she had no chioce about leaving the university her employment was terminated.
THE COURT: Q. Right?
Mr. SUTTON: A. However, I was advised by the payroll department that she refused to retire.
THE COURT: Q. Well, what does that mean? She was not allowed to continue to teach?
Mr. SUTTON: A. Right.
THE COURT: A. You had the consent award, you thought it was a lawful document, and why is it you did not comply with your end of the bargain?
Mr. SUTTON: A. Because our agreement was predicated on the fact that she would retire from Long Island University.
THE COURT: Q. Well, what did that mean?
Mr. SUTTON: A. She applied for retirement

benefits.
THE COURT: Q. She had to make a formal application?
Mr. SUTTON: A. Yes, absolutely.
(page 24 of transcript lines 3-4):
Mr. SUTTON: A. It may be ambiguous. At this point in time if I could rewrite it I would.
(page 33 of transcript lines 14-17):
Q. Didn't Dr, Maher voice her objection to be considered a retiree during your these meetings in June of 1988?
Mr. SUTTON: A. Well, I did hear her comment during the meeting before Dr. Eisenberg, in which she said I'm not retiring...
(page 32 of transcript lines 14-20):
THE COURT: Q. Tell me, if I were to enforce this agreement and find its a legal binding agreement, what would I have to order the university to do in order for her to get the benefits she entitled to get? If she has to submit a piece of paper?
Mr. SUTTON: A. A statement she's a retiree from Long Island University.
(page 33 of transcript lines 5-6):
THE COURT: The enforcement of this agreement may not jurisdictionally be before me right now.
(page 31 of transcript lines 10-18):
Q. So when she ceased her employment in September of 1990, the University terminated her medical coverage, didn't they?
Mr. SUTTON: A. Well, what we wanted to do was to change her medical coverage from current employee to retiree.
Q. That's not what you did?
Mr. SUTTON: A. No, she was not a retiree. She refused to retire.
Q. So, you ceased her medical and insurance coverage at that point?
Mr. SUTTON: A. Absolutely, we had no

choice but to do that.

(page 24 of transcript lines 13-17):

THE COURT: Q. Did she have to wait a third year before she submitted her retirement application?

Mr. SUTTON: A. No, that's what this effectively did. It shortened the tenure time period which was a University requirement that administrative -- (interrupted by the Court).

STATUES AND

UNITED STATES CONSTITUTION AMENDMENTS

Age Discrimination In Employment Act of 1967 29 Section 621 et seq

Age Discrimination In Employment Act of 1967 29 Section 623 (a 1, 2):

(a) Employer practices

It shall be unlawful for an employer--

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age;

(d) Opposition to unlawful practices, participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his or applicants for employment, for an employment agency to discriminate against any individual, or for an labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceedings, or litigation under this chapter.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign

workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency,or labor organization--

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual specified by section 631(a) of this title because of the age of such individual; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Entitlement to coverage under group health plan

(1) For the purposes of this section, any employer must provide that any employee age 65-69, and any employer's spouse age 65 through 69, shall be entitled to coverage under any group plan offered to such employees under the same conditions as any employee, and the spouse of such empoyee, under age 65.

Age Discrimination In Employment Act of 1967 29 U.S.C.A. Section 626 (b)

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, and persuasion

The provision of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216(except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act

under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 or 217 of this title: Provided, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitations judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements with this chapter through informal methods of conciliation, conference, and persuasion.

(c) Civil action; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action of Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: Provided, That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

(d) Filing of charge with Commission; timeliness; conciliation, conference and persuasion

No civil action may be commenced under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed--

(2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after the receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate and alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(e) Statute of limitations; reliance in future on administrative ruling, etc.; tolling

(2) For the period during which the Equal Employment Opportunity Commission is attempting to effect voluntary compliance with requirements of this chapter through informal methods of conciliation, conferences, and persuasion pursuant to subsection (b) of this section, the statute of limitations as provided in section 255 of this title

shall be tolled, but in noe event for a period in excess of one year.

Civil Rights Act of 1964 Title VII

42 U.S.C.A. 2000e-5

Civil Rights Act of 1964 Title VII

42 U.S.C.A. 2000-5 (e 1,2):

(e) Time for filing charges, time for service of notice of charge on respondent; filing of charge with Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person who has aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of

this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

Civil Right Act of 1964 Title VII

42 U.S.C.A. Section (g 1,2A):

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; limitations on judicial orders

(1) If the court find that the respondent has intentially engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the

payment to him of any back pay, if such individual was refused admission, suspended or expelled, or was refused employment or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

United States Constitution Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

United States Constitution Amendment XIV

Section 1. All persons born or naturalized in the United States and subjected to the jurisdictinn thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.